

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

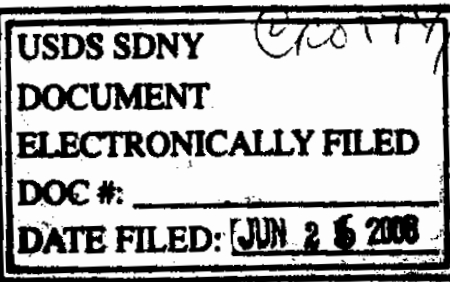
ALETHEA ARROYO, et al.,

Plaintiffs,

- against -

REDEYE GRILL, LP, et al.,

Defendants.



06 Civ. 00381 (PAC)

~~[PROPOSED]~~ ORDER *pac*
APPROVING SETTLEMENT

This matter came before the Court for hearing on June 18, 2008, pursuant to the joint application made at a status conference on March 13, 2008 by Plaintiffs and Redeye Grill, LP, Redeye Grill, Inc., The Fireman Group/Café Concepts, Inc., Sheldon Fireman, William Duffy, Michael Chin, and John Fireman as defendants ("Defendants") (collectively "the Settling Parties") for the Court's approval of the settlement of this action as reflected in the settlement agreement attached hereto as Exhibit A ("the Settlement") which resolves disputed issues between the Settling Parties in this action. The Court, having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, HEREBY ORDERS that:

1. This Court has jurisdiction over the subject matter of this action and over the Settling Parties.
2. This Court finds that the Settlement is fair, just, reasonable, and adequate as to all Plaintiffs, and, as required by 29 U.S.C. § 216(c), approves the Settlement in all respects, and directs the Settling Parties to perform its terms.

3. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over the subject matter of this action and the Settling Parties for a period of three years for the purpose of enforcing the terms of the Settlement -- the terms of which are attached as Exhibit A and shall be considered incorporated by reference in this Order ^{but subject to this order's 3 year limitation} -- including, but not limited to, the enforcement of the following policies and practices, as detailed in paragraph 6 (a)-(g) of the settlement agreement attached hereto as Exhibit A:

(a) The Defendants will not require that any worker at the Redeye Grill share his or her tips with "zone maitre d's," floor managers, or any person with supervisory authority, and will prohibit such "zone maitre d's," floor managers, or any person with supervisory authority at the Redeye Grill from sharing in a tip pool;

(b) The Defendants' policies with respect to the deduction of credit card fees from the tips or wages of any employees at the Redeye Grill will comply with all applicable laws, including any change in the law that occurs during the pendency of the injunctive relief imposed pursuant ^{to} this paragraph; and Defendants further agree that they will implement at the Redeye Grill any policy or practice with respect to the deduction of credit card fees that results from settlement or judgment in the *Mohney* action.

(c) The Defendants will comply with all applicable laws regarding call-in pay, spread-of-hours pay, break requirements, and deductions for workers at the Redeye Grill;

(d) Consistent with the law, the Defendants will not retaliate against any employee or former employee of the Redeye Grill for their participation in

the Arroyo Litigation or this settlement, or for complaining about the types of issues raised in the Arroyo Litigation;

(c) The Defendants will put in place, and notify all employees of, a procedure that encourages employees to complain about any perceived discrimination, harassment, wage issues, or other human resources issues without retaliation. Such a procedure will have alternate reporting channels, including to (i) Sheldon Fireman, (ii) the Managing Director or General Manager at the Redeye Grill, (iii) the Vice President of Operations or the Senior Vice President of Operations for the Fireman Group/Café Concepts, Inc., and/or (iv) a human resources professional. Consistent with the law, Plaintiffs agree to utilize the complaint procedures established pursuant to this sub-paragraph. The Defendants will keep employees' complaints confidential to the extent permitted by law;

(f) The Defendants will provide all supervisory employees at the Redeye Grill and all payroll/timekeeping employees at the Fireman Group with human resources training, which will include training on the legal requirements imposed by the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and New York Labor Law § 190 *et seq.*, to be approved by legal counsel; and

(g) The Defendants' policies and practices with respect to the provision and maintenance of uniforms for workers at the Redeye Grill shall comply with all applicable laws. Workers shall be required to purchase and maintain, at their own expense, black pants, white/grey/black shirt, and black shoes that are suitable for their employment at the Redeye Grill. Any additional items of clothing (such as vests or ties) that the Redeye Grill requires that workers wear at the restaurant will be provided and

maintained by the Redeye Grill. To the extent that a worker is required to pay a deposit before receiving a vest, such deposit will be fully refundable upon the return of the vest to the Redeye Grill, and the payment of such deposit will not cause the worker's wages in the week that the deposit is paid to fall below the minimum wage under applicable law.

4. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, Carol A. Wittenberg¹ is hereby appointed to serve as Special Master for the purpose of reviewing any alleged violation of the Settlement in accordance with the following procedures:

(a) Within ten (10) business days of any action or proposed action alleged to violate the Settlement, Plaintiffs may file a petition with the Special Master regarding such action. Plaintiffs' petition shall identify the particular Plaintiff or employee involved, and shall explain why the action or proposed action violates the Settlement. Defendants shall respond within five (5) business days, and shall explain the nature of the action and the justification for it.

(b) Within fifteen (15) business days of the Defendants' response pursuant to subparagraph (a), above (or within such other time as is mutually agreeable to the parties and the Special Master), the Special Master shall meet with the parties, decide whether the action in question was in fact a violation of the Settlement, and promptly issue a written report to all parties and to the Court with her findings and recommendations. The Special Master may find that the action taken by Defendants is not a violation of the Settlement and sustain it; or she may find that the action is a violation and overrule it. If the Special Master finds that the action is a violation of the

¹ Carol A. Wittenberg, JAMS, 620 Eighth Avenue, New York, New York, 10018 (212) 751-2700.

Settlement, she may order the Defendants to remedy the violation and refrain from further like violations. Either party may, within ten (10) calendar days of issuance, appeal the Special Master's Report to the Court.

(c) The Special Master shall be compensated at her normal hourly rate of \$550.00 per hour, and the Special Master's fees shall be split between the parties.

IT IS SO ORDERED.

DATED: June 26, 2008



THE HONORABLE PAUL A. CROTTY
UNITED STATES DISTRICT JUDGE

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into as of the ____ day of April, 2008, by and between the Plaintiffs¹ and Redeye Grill, LP, Redeye Grill, Inc., The Fireman Group/Café Concepts, Inc., Sheldon Fireman, William Duffy, Michael Chin, and John Fireman (collectively, the "Defendants"). (The Plaintiffs and the Defendants are referred to below as the "Parties.")

WHEREAS, the Plaintiffs filed an action on January 18, 2006 in the United States District Court for the Southern District of New York, as Case No. 06 Civ. 00381 (PAC), against the Defendants (the "Arroyo Litigation"); and

WHEREAS, the Defendants deny all allegations of wrongdoing and deny any liability to the Plaintiffs; and

WHEREAS, to put to rest the controversy between them and to avoid the expense, inconvenience, distraction, uncertainties and delay of further proceedings, without any admission of liability whatsoever by either of them, the Parties have agreed to settle all matters in controversy between them upon terms hereinafter set forth;

¹ As used herein, the term the "Plaintiffs" shall be defined as: Alethea Arroyo, Cesar Aviles, John Cabrera, Jennifer Mascia, Rafael Monterrubio, Chad Parson, Batson Vea, Josh Adamson, Orlando Andrades, Cesar Ivan Arias, Nathan Aylworth, Jeffrey Barrera, Jeff Scot Blameuser, Alison Caldwell, Turhan Caylak, Pedro Cordova, Abdurrahman Erkan, Edwin Espinoza, Katherine Ferguson, Javier Garcia, Gentian Haxhillari, Michael Horn, Monika Hryszkiewicz, Javier Ibanez, Dionisio Miguel Juliao, Emily Krieger, Luis Lara, Simon Leal, Beth Ann Leone, Karen Lowry, Brian Marino, Brian McEnany, Sean Meade, Leah Meisterlin, Arturo Melgoza, Rebecca O'Sullivan, Mark Pelletier, Bernard Peralta, Dayle Pivetta, Lisa Rezac, Dan Robinson, Enedino Rosas, Tanwir Shamim, Marina Stan, Wlodzimierz Tanajno, John Tobon, Dawn Tomassone, Lauro Vazquez, Benjamin Scott Wiesner, Peter Zinzi, Marc Balfour, Sayed Moustafa, Steven Shane Wolhar, and Bayron Soloranzo.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and respective agreements, terms, and conditions contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Within twenty (20) business days of approval of the Agreement by the Hon. Paul A. Crotty, United States District Judge for the Southern District of New York, the Defendants will make cash payments totaling \$294,000.00 directly to the Plaintiffs on a *pro rata* basis to reflect fifty (50)% of each Plaintiff's settlement share as reflected on the schedule referenced in paragraph 2, below, net of any applicable offsets as set forth in paragraph 4, below (the "Initial Cash Payments"). Within twenty (20) business days after the Initial Cash Payments are made to Plaintiffs, the Defendants will make (i) cash payments totaling \$294,000.00 directly to the Plaintiffs on a *pro rata* basis to reflect fifty (50)% of each Plaintiff's settlement share as reflected on the schedule referenced in paragraph 2, below, net of any applicable employment taxes and offsets as set forth in paragraphs 3 and 4, below, and (ii) a cash payment of \$47,000.00 directly to the New York Legal Assistance Group ("NYLAG") (all of these cash payments, collectively, are referred to as the "Settlement Amount"). The Settlement Amount shall be payment in full of all claims under the Fair Labor Standards Act (the "FLSA"), the New York Labor Law (the "NYLL"), or contract law, including interest thereon, attorneys' fees, costs, and disbursements arising out of the Arroyo Litigation (collectively, the "Wage-Related Claims"). It is expressly agreed that the Settlement Amount to be paid pursuant to this Agreement does not include any payment of punitive damages under the NYLL. Other than the employer payroll taxes to be paid by the Defendants pursuant to paragraph 3(c) below, the Defendants shall not be required to

make cash payments under this Agreement that exceed the Settlement Amount in full satisfaction of the Wage-Related Claims.

2. Each Plaintiff's proportionate share of the Settlement Amount, and the methodology for determining the allocation of such shares among the Plaintiffs, shall be disclosed in writing to each Plaintiff in the form attached as Exhibit A hereto prior to his or her execution of this Agreement, and shall be subject to the approval of the Court. Within five (5) business days of approval of this Agreement by the Court, counsel for the Plaintiffs will provide to counsel for the Defendants a schedule of the settlement payments to be made to each Plaintiff based on the methodology set forth in Exhibit A.

3. (a) For tax purposes, fifty (50)% of the settlement payments to the Plaintiffs pursuant to paragraph 1, above, shall be treated as wages, and fifty (50)% of such payments shall be treated as liquidated damages and interest.

(b) Settlement payments to the Plaintiffs that are to be treated as wages pursuant to subparagraph (a), above, shall be made directly to each Plaintiff in the amounts for each Plaintiff set forth in the schedule of such individual settlement payments referenced in paragraph 2, above, net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service ("IRS") and the payee under the payee's name and social security or taxpayer identification number on an IRS Form W-2. Settlement payments to the Plaintiffs that are to be treated as liquidated damages and interest pursuant to subparagraph (a), above, shall be made directly to each Plaintiff without withholding, and shall be reported to the IRS and the payee under the payee's name and social security or taxpayer identification

number on an IRS Form 1099. The payment of attorneys' fees to NYLAG pursuant to paragraph 1, above, shall be made without withholding, and reported to the IRS and NYLAG under NYLAG's name and taxpayer identification number, which NYLAG shall provide to counsel for the Defendants for this purpose, on an IRS Form 1099.

(c) The Defendants shall pay all state and federal payroll taxes imposed by applicable law, including the employer's share of the FICA tax and any federal and state unemployment tax due, with respect to the amounts treated as wages pursuant to subparagraph (a), above.

(d) The Plaintiffs acknowledge and agree that each of them will be solely responsible for all taxes, interest and penalties due with respect to any settlement payments received pursuant to this Agreement (other than the taxes specified in subparagraph (c), above).

4. The Defendants shall not have any obligation to make a settlement payment pursuant to paragraphs 1-3, above, to any plaintiff in the Arroyo Litigation who is not a party to this Agreement (a "Non-settling Plaintiff"), and any portion of the Settlement Amount allocated to such Non-settling Plaintiff per the schedule referenced in paragraph 2, above, shall be retained by the Defendants. Any settlement payment to be made to Plaintiff Javier Garcia, or any portion of the Settlement Amount allocated to him that is retained by Defendants pursuant to this paragraph, shall be offset by the sum (\$8,500) already paid by the Defendants to him in purported settlement of his claims in the Arroyo Litigation.

5. Contemporaneously with the payment of the Settlement Amount as set forth in paragraphs 1-3, above, counsel for the Plaintiffs shall execute and deliver to

counsel for the Defendants, and shall file with the Court, pursuant to Fed. R. Civ. P. 41(a)(1)(i), a Notice of Dismissal with Prejudice, dismissing with prejudice all claims asserted by the Plaintiffs in the Arroyo Litigation, except for those claims asserted by the Non-settling Plaintiffs. Upon entry by the Court of the Notice of Dismissal with Prejudice and notice of such to the Parties, the releases set forth in paragraphs 8-10, below, shall become effective.

6. The Defendants agree that the injunctive relief set forth below in subparagraphs (a)-(g) shall remain in effect for four (4) years and shall be subject to the continuing jurisdiction of the United States District Court for the Southern District of New York:

(a) The Defendants will not require that any worker at the Redeye Grill share his or her tips with "zone maitre d's," floor managers, or any person with supervisory authority, and will prohibit such "zone maitre d's," floor managers, or any person with supervisory authority at the Redeye Grill from sharing in a tip pool;

(b) The Defendants' policies with respect to the deduction of credit card fees from the tips or wages of any employees at the Redeye Grill will comply with all applicable laws, including any change in the law that occurs during the pendency of the injunctive relief imposed pursuant this paragraph; and Defendants further agree that they will implement at the Redeye Grill any policy or practice with respect to the deduction of credit card fees that results from settlement or judgment in the *Mohney* action.

(c) The Defendants will comply with all applicable laws regarding call-in pay, spread-of-hours pay, break requirements, and deductions for workers at the Redeye Grill;

(d) Consistent with the law, the Defendants will not retaliate against any employee or former employee of the Redeye Grill for their participation in the Arroyo Litigation or this settlement, or for complaining about the types of issues raised in the Arroyo Litigation;

(e) The Defendants will put in place, and notify all employees of, a procedure that encourages employees to complain about any perceived discrimination, harassment, wage issues, or other human resources issues without retaliation. Such a procedure will have alternate reporting channels, including to (i) Sheldon Fireman, (ii) the Managing Director or General Manager at the Redeye Grill, (iii) the Vice President of Operations or the Senior Vice President of Operations for the Fireman Group / Café Concepts, Inc., and/or (iv) a human resources professional. Consistent with the law, Plaintiffs agree to utilize the complaint procedures established pursuant to this sub-paragraph. The Defendants will keep employees' complaints confidential to the extent permitted by law;

(f) The Defendants will provide all supervisory employees at the Redeye Grill and all payroll/timekeeping employees at the Fireman Group with human resources training, which will include training on the legal requirements imposed by the FLSA and NYLL to be conducted by Shea Stokes; and

(g) The Defendants' policies and practices with respect to the provision and maintenance of uniforms for workers at the Redeye Grill shall comply with

all applicable laws. Workers shall be required to purchase and maintain, at their own expense, black pants, white shirt, and black shoes that are suitable for their employment at the Redeye Grill. Any additional items of clothing (such as vests or ties) that the Redeye Grill requires that workers wear at the restaurant will be provided and maintained by the Redeye Grill. To the extent that a worker is required to pay a deposit before receiving a vest, such deposit will be fully refundable upon the return of the vest to the Redeye Grill, and the payment of such deposit will not cause the worker's wages in the week that the deposit is paid to fall below the minimum wage under applicable law.

7. Any pending retaliation, discrimination, or harassment claims in the Arroyo Litigation shall be submitted to Arbitrator Carol Wittenberg (the "Arbitrator") pursuant to an expedited alternative dispute resolution ("ADR") proceeding. The Parties agree that the monies paid to any Plaintiff in settlement of claims brought by the National Labor Relations Board ("NLRB") in its consolidated cases with the lead caption of Case No. 2-CA-35729 may be considered by the Arbitrator as a potential offset to any retaliation claims resolved pursuant to the foregoing ADR proceeding. All decisions rendered by the Arbitrator in the foregoing ADR proceeding shall be final and binding.

8. The Plaintiffs hereby release the Defendants, together with their present and former employees, officers, directors, principals, shareholders, agents, heirs, executors, administrators, predecessors, successors, assigns, representatives, parents, subsidiaries, and affiliates (collectively, the "Defendant Releasees") from any and all claims, demands, actions, causes of action, contracts, obligations, suits, debts, liens, losses, costs or liabilities, of any kind, character or nature whatsoever, whether known or unknown, fixed or contingent, which the Plaintiffs ever had, now have, or may hereafter

claim to have against any of the Defendant Releasees on or before the last date of execution of this Agreement and which relate to, arise out of, were brought in, or could have been brought in the Arroyo Litigation. The foregoing release does not include any claims and liabilities associated with the claims set forth in paragraph 7 hereof.

9. The Defendants hereby release the Plaintiffs and their heirs and assigns (collectively, the "Plaintiff Releasees") from any and all claims, demands, actions, causes of action, contracts, obligations, suits, debts, liens, losses, costs or liabilities, of any kind, character or nature whatsoever, whether known or unknown, fixed or contingent, which the Defendants ever had, now have, or may hereafter claim to have against any of the Plaintiff Releasees on or before the last date of execution of this Agreement and which relate to, arise out of, or could have been brought in the Arroyo Litigation. Defendants have withdrawn the Offers of Judgment made to forty-seven (47) of the Plaintiffs, and the Parties acknowledge that such Offers are no longer of any force or effect.

10. The Plaintiffs and the Defendants expressly waive any and all rights that they may have under any applicable statute, doctrine or principle of law restricting the right of any person to release claims that such person does not know or suspect to exist at the time of executing a release, which claims, if known, may have materially affected such person's decision to give such release, including California Civil Code Section 1542, or any such right or benefit available to a person or entity in any capacity under the comparable provisions of any other state or federal statutory or common law. In connection with such waiver and relinquishment, the Plaintiffs and the Defendants acknowledge that they are aware that they may hereafter discover claims

currently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true, with respect to the matters released herein. Nevertheless, it is the joint intention of the Parties that this Agreement shall settle each and every claim, dispute and controversy, known or unknown, fixed or contingent, that the Plaintiffs may have against the Defendants, and the Defendants may have against the Plaintiffs, to the extent set forth in paragraphs 5 and 6 above.

11. Plaintiffs acknowledge and agree that they will not seek recovery in any pending lawsuit against Defendants, including *Mohney et al. v. Shelly's Prime Steak, et al.*, No. 06 Civ. 4270 (PAC). Plaintiffs further agree that they will withdraw any previously submitted "opt-in" forms with respect to the FLSA claims in the *Mohney* action, and that they will waive their participation in the state-law class in the *Mohney* action.

12. The Plaintiffs acknowledge that this Agreement has been executed in connection with the compromise and settlement of disputed claims, and that this Agreement and the settlement payments to each Plaintiff provided for herein do not constitute any acknowledgement, admission or concession on the part of the Defendants of liability for any matter, or of the merit of any of the Plaintiffs' legal positions.

13. The Plaintiffs and their attorneys agree that they will keep confidential the specific share of the Settlement Amount received by each Plaintiff, and will not disclose the amount of such share to anyone except as required by law, regulation or other legal process, or to obtain approval of or enforce the terms of this Agreement; provided, however, that this prohibition shall not apply to disclosure to a Plaintiff's immediate family, financial advisors, counsel, tax advisors and accountants, or taxing

authorities in connection with the preparation or review of tax returns, but that Plaintiffs will direct any such person to whom such a disclosure is made to keep any such information confidential. The Defendants reserve their rights to make an application to the Court to maintain the confidentiality of this settlement and Agreement, including all of its specific terms.

14. The Parties warrant and represent that they have the authority to enter into this Agreement.

15. This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original and together shall constitute one instrument. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

16. This Agreement supersedes all prior writings and agreements by the Parties or their counsel with respect to the settlement of the Arroyo Litigation, constitutes the entire agreement of the Parties with respect to such settlement, and may be changed or cancelled only by a written agreement signed by all Parties hereto. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein.

17. The Parties are equally responsible for the preparation of this Agreement, and the terms of this Agreement, therefore, shall not be construed more strictly against any of the Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law principles, to the extent that federal law does not apply. Any action based on this Agreement or to enforce any of its terms, except as otherwise provided herein, shall be

venued in the United States District Court for the Southern District of New York, which shall retain jurisdiction over all such disputes.

IN WITNESS WHEREOF, the Defendants hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: 5/15, 2008




Redeye Grill, LP

Dated: 5/15, 2008



Redeye Grill, Inc.

Dated: 5/15, 2008



The Fireman Group/Cafe Concepts, Inc.

Dated: 5/15, 2008



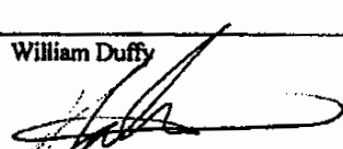
Sheldon Fireman

Dated: 5/16, 2008



Michael Chin

Dated: _____, 2008



William Duffy

Dated: 5/16, 2008



John Fireman

IN WITNESS WHEREOF, the Defendants hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008



Redeye Grill, LP

Dated: _____, 2008



Redeye Grill, Inc.

Dated: _____, 2008



The Fireman Group/Café Concepts, Inc.

Dated: _____, 2008



Sheldon Fireman

Dated: _____, 2008



Michael Chin

Dated: 5/19, 2008



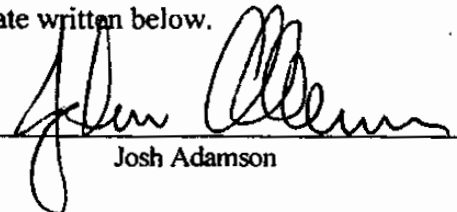
William Duffy

Dated: _____, 2008

John Fireman

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: 3/4/08, 2008

By: 
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: 02/27, 2008

By: 
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By:  _____
~~Cesar Juan Arias~~

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: 3/7, 2008

By:  _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Aletha Arroyo

Dated: MARCH 7, 2008

By: 
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: 3/5/_____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: 3/16, 2008

By:  _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: 2/25/08, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour

Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: MARCH 2, 2008

By: Jeff Scot Blameuser
Jeff Scot Blameuser

Dated: _____, 2008

By: _____
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008

By: _____
Josh Adamson

Dated: _____, 2008

By: _____
Orlando Andrades

Dated: _____, 2008

By: _____
Cesar Ivan Arias

Dated: _____, 2008

By: _____
Alethea Arroyo

Dated: _____, 2008

By: _____
Cesar Aviles

Dated: _____, 2008

By: _____
Nathan Aylworth

Dated: _____, 2008

By: _____
Marc Balfour


Dated: _____, 2008

By: _____
Jeffrey Barrera

Dated: _____, 2008

By: _____
Jeff Scot Blameuser

Dated: 02-28-2008, 2008

By: 
John Cabrera

Dated: _____, 2008

By: _____
Alison Caldwell

IN WITNESS WHEREOF, the Plaintiffs hereto have executed this
Settlement Agreement and Release as of the last date written below.

Dated: _____, 2008 By: _____
Josh Adamson

Dated: _____, 2008 By: _____
Orlando Andrades

Dated: _____, 2008 By: _____
Cesar Ivan Arias

Dated: _____, 2008 By: _____
Alethea Arroyo

Dated: _____, 2008 By: _____
Cesar Aviles

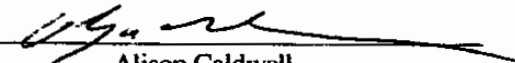
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Nathan Aylworth

Dated: _____, 2008 By: _____
Marc Balfour

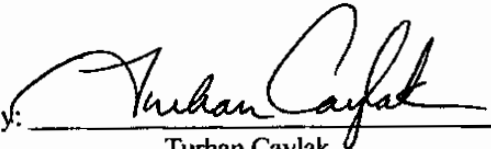
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Jeffrey Barrera

Dated: _____, 2008 By: _____
Jeff Scot Blameuser

Dated: _____, 2008 By: _____
John Cabrera

Dated: 3-10-08, 2008 By: 
Alison Caldwell

Dated: _____, 2008

By: 
Turhan Caylak

Dated: _____, 2008

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Pedro Cordova

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Abdurrahman Erkan

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Michael Horn

Dated: _____, 2008

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Monika Hryszkiewicz

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Javier Ibanez

Dated: _____, 2008

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Dionisio Miguel Juliao


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By: _____
Emily Krieger

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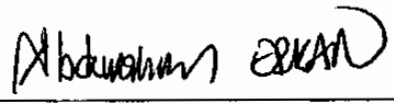
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Javier Garcia

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Gentian Haxhillari

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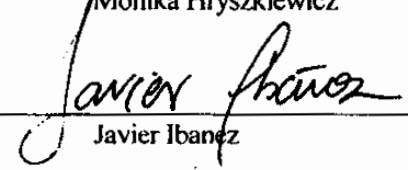
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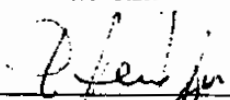
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Luis Lara

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Simon Leal

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Dated: _____, 2008

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Leah Meisterlin

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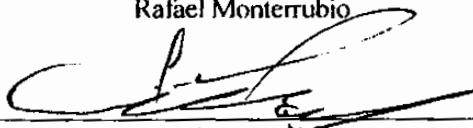
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Włodzimierz Tanajno

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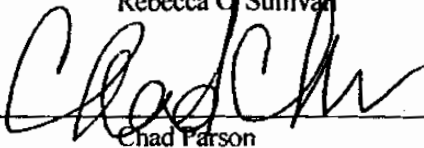
By: _____
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Dayle Pivetta

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Dated: 2.26.08, 2008

By: 
Lisa Rezac

Dated: _____, 2008

By: _____
Dan Robinson

Dated: _____, 2008

By: _____
Enedino Rosas

Dated: _____, 2008

By: _____
Tanwir Shamim

Dated: _____, 2008

By: _____
Bayron Soloranzo

Dated: _____, 2008

By: _____
Marina Stan

Dated: _____, 2008

By: _____
Włodzimierz Tanajno

Dated: _____, 2008

By: _____
John Tobon

Dated: _____, 2008

By: _____
Rebecca O'Sullivan

Dated: _____, 2008

By: _____
Chad Parson

Dated: _____, 2008

By: _____
Mark Pelletier

Dated: _____, 2008

By: _____
Bernardo Peralta

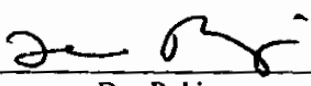
Dated: _____, 2008

By: _____
Dayle Pivetta

Dated: _____, 2008

By: _____
Lisa Rezac

Dated: MARCH, 03, 2008

By:  _____
Dan Robinson

Dated: _____, 2008

By: _____
Enefino Rosas

Dated: _____, 2008

By: _____
Tanwir Shamim

Dated: _____, 2008

By: _____
Bayron Soloranzo

Dated: _____, 2008

By: _____
Marina Stan

Dated: _____, 2008

By: _____
Włodzimierz Tanajno

Dated: _____, 2008

By: _____
John Tobon

Dated: _____, 2008

By: _____
Rebecca O'Sullivan

Dated: _____, 2008

By: _____
Chad Parson

Dated: _____, 2008

By: _____
Mark Pelletier

Dated: _____, 2008

By: _____
Bernardo Peralta

Dated: _____, 2008

By: _____
Dayle Pivetta

Dated: _____, 2008

By: _____
Lisa Rezac

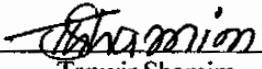
Dated: _____, 2008

By: _____
Dan Robinson

Dated: _____, 2008

By: _____
Enedino Rosas

Dated: 08/25/08, 2008

By: 
Tanwir Shamim

Dated: _____, 2008

By: _____
Bayron Soloranzo

Dated: _____, 2008

By: _____
Marina Stan

Dated: _____, 2008

By: _____
Włodzimierz Tanajno

Dated: _____, 2008

By: _____
John Tobon

Dated: _____, 2008

By: _____
Rebecca O'Sullivan

Dated: _____, 2008

By: _____
Chad Parson

Dated: _____, 2008

By: _____
Mark Pelletier

Dated: _____, 2008

By: _____
Bernardo Peralta

Dated: _____, 2008

By: _____
Dayle Pivetta

Dated: _____, 2008

By: _____
Lisa Rezac

Dated: _____, 2008

By: _____
Dan Robinson

Dated: _____, 2008

By: _____
Enedino Rosas

Dated: _____, 2008

By: _____
Tanwir Shamim

Dated: 4/29/08, 2008

By: Bayron Soloranzo, Bayron
Bayron Soloranzo

Dated: _____, 2008

By: _____
Marina Stan

Dated: _____, 2008

By: _____
Włodzimierz Tanajno

Dated: _____, 2008

By: _____
John Tobon

Dated: _____, 2008

By: _____
Rebecca O'Sullivan

Dated: _____, 2008

By: _____
Chad Parson

Dated: _____, 2008

By: _____
Mark Pelletier

Dated: _____, 2008

By: _____
Bernardo Peralta

Dated: _____, 2008

By: _____
Dayle Pivetta

Dated: _____, 2008

By: _____
Lisa Rezac

Dated: _____, 2008

By: _____
Dan Robinson

Dated: _____, 2008

By: _____
Enedino Rosas

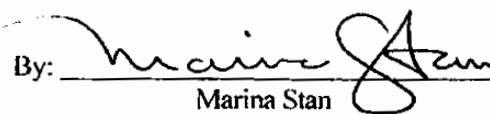
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By: _____
Tanwir Shamim

Dated: _____, 2008

By: _____
Bayron Soloranzo

Dated: FEB. 23, 2008

By: 
Marina Stan

Dated: _____, 2008

By: _____
Włodzimierz Tanajno

Dated: _____, 2008

By: _____
John Tobon

Dated: _____, 2008

By: _____
Rebecca O'Sullivan

Dated: _____, 2008

By: _____
Chad Parson

Dated: _____, 2008

By: _____
Mark Pelletier

Dated: _____, 2008

By: _____
Bernardo Peralta

Dated: _____, 2008

By: _____
Dayle Pivetta

Dated: _____, 2008

By: _____
Lisa Rezac

Dated: _____, 2008

By: _____
Dan Robinson

Dated: _____, 2008

By: _____
Enedino Rosas

Dated: _____, 2008

By: _____
Tanwir Shamim

Dated: _____, 2008

By: _____
Bayron Soloranzo

Dated: _____, 2008

By: _____
Marina Stan

Dated: February 25, 2008

By: Włodzimierz Tanajno
Włodzimierz Tanajno

Dated: _____, 2008

By: _____
John Tobon

Dated: _____, 2008

By: _____
Rebecca O'Sullivan

Dated: _____, 2008

By: _____
Chad Parson

Dated: _____, 2008

By: _____
Mark Pelletier

Dated: _____, 2008

By: _____
Bernardo Peralta

Dated: _____, 2008

By: _____
Dayle Pivetta

Dated: _____, 2008

By: _____
Lisa Rezac

Dated: _____, 2008

By: _____
Dan Robinson

Dated: _____, 2008

By: _____
Enedino Rosas

Dated: _____, 2008

By: _____
Tanwir Shamim

Dated: _____, 2008

By: _____
Bayron Soloranzo

Dated: _____, 2008

By: _____
Marina Stan

Dated: _____, 2008

By: _____
Włodzimierz Tanajno

Dated: February 26, 2008

By: John Tobon
John Tobon

Dated: March 5, 2008

By: Dawn Tomassone
Dawn Tomassone

Dated: _____, 2008

By: _____
Lauro Vazquez

Dated: _____, 2008

By: _____
Batson Vea

Dated: _____, 2008

By: _____
Benjamin Scott Wiesner

Dated: _____, 2008

By: _____
Peter Zinzi

Dated: _____, 2008

By: _____

Dawn Tomassone

Dated: April 17, 2008

By: _____

Larry Vazquez

Dated: _____, 2008

By: _____

Batson Vea

Dated: _____, 2008

By: _____

Benjamin Scott Wiesner

Dated: _____, 2008

By: _____

Peter Zinzi

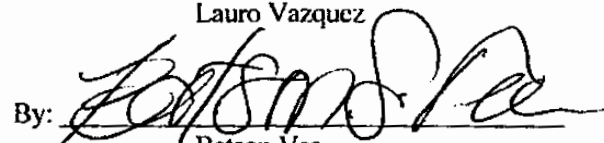
Dated: _____, 2008

By: _____
Dawn Tomassone

Dated: _____, 2008

By: _____
Lauro Vazquez

Dated: 2/24/08, 2008

By: 
Batson Vea

Dated: _____, 2008

By: _____
Benjamin Scott Wiesner

Dated: _____, 2008

By: _____
Peter Zinzi

Dated: _____, 2008

By: _____

Dawn Tomassone

Dated: _____, 2008

By: _____

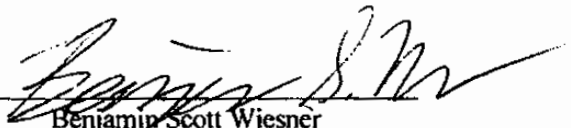
Lauro Vazquez

Dated: _____, 2008

By: _____

Batson Vea

Dated: 2/26/ _____, 2008

By:  _____

Benjamin Scott Wiesner

Dated: _____, 2008

By: _____

Peter Zinzi

Dated: _____, 2008

By: _____
Dawn Tomassone

Dated: _____, 2008

By: _____
Lauro Vazquez

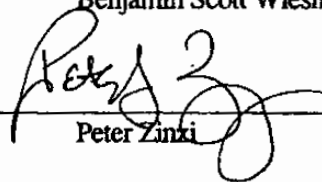
Dated: _____, 2008

By: _____
Batson Vea

Dated: _____, 2008

By: _____
Benjamin Scott Wiesner

Dated: 2/28, 2008

By: 
Peter Zinzi

Dated: March 3, 2008


By: 
Steven Shane Wolhar

Exhibit A

Calculation of Each Plaintiff's Share of the Settlement Funds

The amount of each of the 54 plaintiffs' share of the total settlement dollars (\$588,000) was calculated by using the number of weeks worked by each plaintiff as the primary measure of how much each share was worth. However, that basic formula was fine-tuned in a number of ways to ensure that all plaintiffs were awarded shares based not just on the number of weeks worked, but also based on the type and number of claims they asserted in the *Arroyo* litigation.

First, we broke the entire group of all plaintiffs into three sub-groups based on the type of claims they generally asserted: all bussers, all servers, and all other workers (*i.e.*, bartenders and "back of the house" workers). For each subgroup, we calculated the total number of weeks worked by a subgroup, using primarily payroll data, and then calculated the share of the total settlement dollars that each subgroup was entitled to based on the total number of weeks worked by the subgroup. We then determined, by weighting the types of claims asserted by each subgroup in terms of the likelihood of success on the merits and the dollar or damages value of each type of claim, that the claims of the busser and server subgroups were of roughly equal value. Thus, each busser and each server would receive a settlement share based on the amount of time they had worked at the Redeye Grill from 2000 through March 2007 (when many of the Redeye policies complained of were allegedly changed).

For bussers, the unit of time worked was measured in weeks, which is the only reliable information available. For servers, a more precise measure of time worked was available -- the number of shifts worked each week. The dollar value of a week worked or a shift worked was derived by dividing the settlement dollars available to the

busser subgroup as a whole by the total number of weeks worked by all bussers, and for servers, by dividing the settlement dollars allotted to their subgroup by the total number of shifts worked by all servers. To determine the settlement share allotted to each busser, the dollar value of a busser week was multiplied by the number of weeks that an individual busser worked from 2000 through March 2007. For servers, the same calculation was performed with shifts, rather than weeks, as the unit of measure. For the third subgroup of workers who were neither bussers nor servers, it was determined that the claims of the four "back of the house" workers were most similar to the bussers, but because those workers had not asserted some of the bussers' claims with the most value, their shares were reduced by 40-44% of the weeks that they had worked. For the two bartenders in this subgroup, their claims were most similar to those of the servers, but the bartenders' shares were reduced by 50% to account for the fact that the bartenders did not assert some of the servers' claims with the most value.

Lastly, there were two other adjustments made in calculating the settlement shares: first, the sole claims asserted by two "back of the house" workers were breach of contract claims for unpaid sick days. Because these claims are not comparable to the claims of any other workers either in nature or size, we discounted the value of such claims roughly in line with the overall settlement discount accepted by all plaintiffs, and subtracted those two shares from the total settlement funds before calculating the value of each of the remaining shares. Second, for three bussers who claimed to have worked for a year or more, there was no available payroll data for the numbers of weeks they had worked. We therefore determined the average number of weeks worked each

year by all other bussers, and assigned that average number of weeks per year to those three bussers.

In short, the basic formula used for each group of similarly situated workers was as follows:

- | | | |
|-----|--------------------|--|
| (a) | Servers: | [# of total shifts worked] x [dollar value of one shift] |
| (b) | Bussers: | [# of total weeks worked] x [dollar value of one week] |
| (c) | Bartenders: | [50% of # of total shifts worked] x [dollar value of one shift] |
| (d) | Back of the House: | [40-44% of # of total weeks worked] x [dollar value of one week] |

Based on the formula applicable to [Plaintiff's] [insert subgroup] subgroup, [Plaintiff's] settlement share will be \$_____, subject to applicable taxes as explained below.

The settlement payments for each plaintiff will be made directly by the defendants to each plaintiff in the form of two checks, with each check representing 50% of each plaintiff's settlement payment: the first check, reflecting back wages, will be reduced by the withholding of all applicable employee income and other taxes (as in your regular paychecks); the second check, reflecting liquidated damages and interest, will not be subject to any withholding of taxes, though each plaintiff is responsible for paying any taxes owed on the money received in that second check, as well as any additional taxes owed on the first check that are not withheld.

If you have asserted a claim that the defendants retaliated against you in some fashion (*i.e.*, discharge) for joining the *Arroyo* litigation, or if you have asserted a claim for discrimination or harassment, those claims are not part of this settlement, and pursuant to paragraph 7 of the Settlement Agreement, will be resolved separately through an expedited arbitration procedure.

If you have any questions of any kind, please contact any of your lawyers at Paul Weiss.